

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
Implementation of the Commercial ) WT Docket No. 05-211  
Spectrum Enhancement Act and )  
Modernization of the Commission's )  
Competitive Bidding Rules and )  
Procedures )

To: The Commission

**COMMENTS OF THE WIRELESS BROADBAND SERVICE PROVIDERS  
ASSOCIATION**

The Wireless Broadband Service Providers Association (“WBSPA”) hereby respectfully submits the following comments for consideration by the Commission with respect to the above-referenced proceeding examining the Commission’s designated entity (“DE”) rules. WBSPA is supportive of the Commission’s efforts, and those efforts put forth by Council Tree Communications (“CTC”) and others, to cause the revision of the Commission’s DE rules to ensure that competitive wireless broadband providers may obtain usable radio spectrum at auction pursuant to auction preferences envisioned by Congress that are intended to benefit small businesses and entrepreneurs only.

WBSPA (pronounced “WEBspa”) is a national organization of the wireless broadband industry formed to promote access to wireless broadband spectrum for use by new competitive wireless broadband service providers nationwide. WBSPA’s mission is to assist competitive wireless broadband

service providers nationwide and new entrants seeking to serve under-served markets in gaining access to usable radio spectrum, and to educate its members about the regulatory processes for acquiring and obtaining access to these scarce resources in order to provide new competitive wireless broadband services.<sup>1</sup>

WBSPA is concerned that the Commission not fail in this proceeding to reset the stage for creating competition in wireless services – and namely new wireless broadband services that may be made available by multiple new entrants interested in deploying these services to the public.<sup>2</sup> It is WBSPA's position that the Commission should assure in particular that spectrum may be available on a reasonable basis to new competitive entrants and small businesses in the upcoming AWS auction.

Further, WBSPA believes that a restoration of the DE program consistent with the intent of Congress is essential to ensure that scarce spectrum is not entirely controlled by large national carriers that in turn may allow the spectrum to lay fallow and un-developed in rural and under-served markets. This auction is one of the last major reallocations of spectrum to the commercial sector and it is critical that the Commission establish the DE program to ensure not only competitive entry but also to ensure that the spectrum not be permitted to lay fallow, controlled by only the major carriers

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<sup>1</sup> For further information about WBSPA, see [www.wbspa.org](http://www.wbspa.org).

<sup>2</sup> Some of these entities are listed on WBSPA's website at <http://www.wbspa.org/wireless-broadband-marketplace.html>.

that have limited interest in under-served markets. The Commission can ensure these goals are satisfied by the following four objectives.

1. **The Commission Should Ensure that Only DEs are Permitted to Benefit from Bidding Credits.**

The intent of Congress in creating the designated entity provisions of Section 309(j) of the Communications Act of 1934<sup>3</sup> was to ensure that small businesses, entrepreneurs, rural telephone companies, and other disadvantaged businesses could compete against large telecommunications companies for licenses auctioned by the Commission. The Commission's own implementation of this section was intended to facilitate competition in wireless services.<sup>4</sup> This clear Congressional mandate and the Commission's policies in creating the DE rules have been undermined due to participation by the largest wireless carriers through improper material relationships designed to skirt the auction bidding credit rules. The Commission must close this loophole and preserve bidding credits only for those entities that are truly eligible.

WBPSA strongly supports the proposals put forth by CT to eliminate and prohibit any ability for any communications services provider whose services are regulated by the FCC or any state regulatory body to enter into any financial relationship with an otherwise eligible DE in which it has the ability to either directly or indirectly control or influence the management, operations or ownership of that entity, for the purposes of supporting that

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<sup>3</sup> 47 U.S.C. § 309(j)(3).

<sup>4</sup> See *In re Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd. 2348 (1994).

DE's participation in any FCC auction in which the DE is seeking bidding credits. WBSPA believes this broader definition should be adopted and the prohibitions on support should not be restricted only to large carriers attempting to obtain spectrum through a DE for in-region markets.

**2. Entities with Over \$1 Billion in Annual Gross Revenue Should be Prohibited from Participating with DEs.**

In establishing the type of entities that are permitted to enter into financial relationships with DEs for the purposes of supporting their participation in an FCC auction in which the DE is seeking bidding credits, the Commission should impose an annual revenue-based test that looks at the prior year's revenue for that company either from its 10K Annual Report to the Securities Exchange Commission or its audited annual financial statements. Although WBSPA agrees with CT that this should be a revenue based test, the level of revenue for a carrier that would be prohibited from entering into such a relationship with a DE should be \$1 billion versus \$5 billion as CT proposes. Any communications service provider with over \$1 billion in annual revenue has the ability to compete directly in any auction for spectrum without having to compete indirectly by entering into a relationship with a DE. Companies with more than \$1 billion of revenue are fully suited to raise money through investors, equity issuance, debt offerings or other funding mechanisms, in order to fund asset acquisitions such as spectrum. The DE rules were established specifically for companies with very limited revenue and were intended to allow those entities to compete

against larger, better heeled players by providing very significant bidding credits. Unfortunately, the Commission has gotten away from ensuring these small entities can compete by eliminating set asides and more significant bidding credits than are presently available. The consequences are that the largest wireless carriers have ended up with most all of the spectrum. This course must now be changed.

### **3. The Commission Should Reestablish Set Aside Blocks for DEs**

The Commission's set aside spectrum blocks for DEs furthered the mandate of Section 309(j) by guaranteeing only small entities and entrepreneurs could compete for specific spectrum to enable them to roll out services. The emergent loopholes in the DE rules allowing for large wireless operators to support DEs and the elimination of set asides has created an atmosphere where small business and entrepreneurs can no longer bring innovative new wireless services to market due to the fact the spectrum that has been awarded has ultimately fallen into the largest hands. The Commission must reverse this course immediately and use the upcoming AWS auction to set the stage for new competitors into wireless services. This can be assured through reestablishment of set asides and tightening of the DE eligibility rules.

Set asides assure that only small businesses and entrepreneurs may compete for specific spectrum blocks. WBSA contends that with set asides in the AWS auction for DEs, new competitors will be assured. The types of entities that would be eligible for DE status in the AWS auction are creating and driving the innovation and demand for services in the explosive wireless broadband market, and these are the entities that are deploying networks in under-served markets ignored by the large national carriers.<sup>5</sup>

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<sup>5</sup> For example, BeamSpeed, <http://www.beamspeed.com/>, Commspeed <http://www.commspeed.net/>, Gryphon Wireless <http://www.gryphon.ws/>, and Pegasus Broadband <http://www.pegasusbroadband.com/>, among many others, have deployed wireless broadband services in select markets throughout the United States, including rural and

From wireless Internet service providers (WISPs) using unlicensed frequencies, to emerging wireless broadband providers deploying services on 2.5 GHz spectrum where limited frequencies remain available for lease or purchase, the explosion is occurring because of the innovation and drive of DE eligible new entrants. By not assuring set asides, the chances of the vast majority of AWS spectrum ending up in the largest and most well funded hands remains significant – even with tightening of the DE material relationship restrictions. The public interest demands that set asides be implemented in Auction 66 to ensure that small businesses and entrepreneurs that are driving investment into the emerging wireless broadband industry may compete on equal footing for specific licenses adequate to enable deployment of services.

For example, in the AWS auction, the Commission should set aside at least the B block or E block, and H block or J block for DE eligibility only. Ample spectrum would exist in these blocks for a winning bidder of the B or E blocks, and one or both the H and J blocks, covering the same geographic area(s), to roll out ubiquitous new services. Other blocks would also be suitable for set asides. The critical issue is that some blocks should be set aside so new competition can be assured. The public interest deserves no less.

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underserved markets, using limited available 2.5 GHz spectrum. These service providers could substantially benefit from set asides made available in the AWS auction to supplement and complement their 2.5GHz spectrum in certain deployed markets, as well as make additional spectrum available to them in other markets where they would otherwise be completely unable to roll out services due to completely unaffordable spectrum.



#### **4. Bidding Credits Should be Increased to Benefit DEs**

Restriction of bidding credits to 25% for DEs also promises to guarantee that DEs will win few or no AWS licenses. True DEs unsupported by large well heeled financial partners simply do not have the resources to outbid the largest wireless players with only a 25% bidding credit on their side. Large carriers that can easily raise hundreds of millions or billions of dollars (or which have such large cash reserves) can easily outbid even the strongest and best funded DEs in nearly every case. This is simple common sense.

The Commission should reinstate bidding credits of at least 45% for DEs so they can at least have a chance to compete. Without taking these measures, the obsolescence of new entrants will be guaranteed. The real benefits to the United States of raising a few billion more dollars for the U.S. Treasury versus creating several potential new competitors in the wireless industry that may contribute tens or hundreds of billions to the U.S. economy over the next five years must be carefully weighed and considered by the Commission before the AWS auction may begin without significant increased bidding credits for DEs. This responsibility rests squarely with the Commission now.

#### **Conclusion**

For these reasons, WBSPA requests the Commission immediately reform the DE rules to prohibit the largest carriers from participation in

auctions as financial supporters of DEs, as well as create set asides for DEs and significantly increase DE bidding credits.

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